



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/579,393 | 05/26/2000 | Thomas M. Krikorian | 9660-000001 | 7066 |
| 26703 7590 08/04/2008 HARNESS, DICKEY & PIERCE P.L.C. 5445 CORPORATE DRIVE SUITE 200 TROY, MI 48098 | | | | |
| EXAMINER | | | | |
| HALIM, SAHERA | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 2157 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 08/04/2008 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

1. Attachment: The applicant argues that Mott fails to teach the limitations of "a continues play program". The examiner disagrees, Mott teaches a continues play program (see col. 9, line 9 - 56, the digital information or programs). The applicant argues that "a continues play program is "an executable for automatically playing selections from the playback control devices". In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a continues play program is "an executable for automatically playing selections from the playback control devices) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to the applicant's arguments that the reference is teaching away, the applicant is directed to the following sections of the MPEP.

However, "the prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed...." In *re* Fulton, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004). >See also MPEP § 2123.

"The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." In *re* Heck, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting In *re* Lemelson, 397 F.2d 1006,

Art Unit: 2157

1009, 158 USPQ 275, 277 (CCPA 1968)). A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). See also *Upsher-Smith Labs. v. Pamlab, LLC*, 412 F.3d 1319, 1323, 75 USPQ2d 1213, 1215 (Fed. Cir. 2005)(reference disclosing optional inclusion of a particular component teaches compositions that both do and do not contain that component); *Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998) (The court held that the prior art anticipated the claims even though it taught away from the claimed invention. "The fact that a modem with a single carrier data signal is shown to be less than optimal does not vitiate the fact that it is disclosed.").